

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Phillip J. & Sharon Carlton :

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
Personal Income Tax :  
under Article 22 of the Tax Law  
for the Years 1972 - 1974. :

AFFIDAVIT OF MAILING

State of New York  
County of Albany

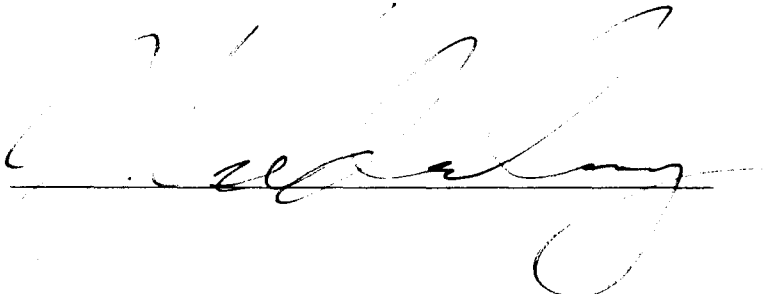
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 25th day of July, 1980, he served the within notice of Decision by certified mail upon Phillip J. & Sharon Carlton, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Phillip J. & Sharon Carlton  
5962 Leeland St.  
St. Petersburg, FL 33715  
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
25th day of July, 1980.

Robert A. Bank



STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of

Phillip J. & Sharon Carlton :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
Personal Income Tax :  
under Article 22 of the Tax Law  
for the Years 1972 - 1974. :

State of New York  
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 25th day of July, 1980, he served the within notice of Decision by certified mail upon Alan Richards, CPA the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Alan Richards, CPA  
Richards and Wallberg  
420 Lexington Ave.  
New York, NY 10017

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this  
25th day of July, 1980.

Doroah A Bank

[Signature]

STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

July 25, 1980

Phillip J. & Sharon Carlton  
5962 Leeland St.  
St. Petersburg, FL 33715

Dear Mr. & Mrs. Carlton:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 690 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Alan Richards, CPA  
Richards and Wallberg  
420 Lexington Ave.  
New York, NY 10017  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :

of :

PHILLIP J. CARLTON and SHARON CARLTON : DECISION,

for Redetermination of a Deficiency or for Refund:  
of Personal Income Tax under Article 22 of the  
Tax Law for the Years 1972, 1973 and 1974. :

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Petitioners, Phillip J. Carlton and Sharon Carlton, 5962 Leeland Street, St. Petersburg, Florida 33715, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1972, 1973 and 1974 (File No. 15828).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 24, 1977 at 11:20 A.M. Petitioners appeared by Alan Richards, CPA. The Audit Division appeared by Peter Crotty, Esq. (Francis Cosgrove, Esq., of counsel).

ISSUE

Whether the interest income of a nonresident derived from the sale of commercial real property within New York State is subject to personal income tax.

FINDINGS OF FACT

1. Petitioners, Phillip J. Carlton and Sharon Carlton, filed joint New York State nonresident income tax returns for 1973, 1974 and 1975.
2. On April 14, 1976, the Audit Division issued a Statement of Audit Changes against petitioners, Phillip J. Carlton and Sharon Carlton, on the grounds that an installment gain on the sale of real property with a situs in New York State was subject to New York State personal income tax, as well as the interest income received in connection with said sale. Accordingly, on April 14, 1976, a Notice

of Deficiency was issued against petitioner for \$11,781.59 in personal income tax, plus \$1,498.35 in interest, for a total due of \$13,279.94.

3. Petitioners owned commercial property in New York State. The property consisted of an automobile dealership and the parcel of real property on which the dealership was constructed. The dealership was sold in 1968 to the same individual who purchased the real property in 1969. When the real property was sold, petitioners took back a mortgage from the purchaser to secure the installment payments. That same year, petitioners became nonresidents. Petitioners received interest on the installments of \$25,651.00 in 1972, \$24,183.00 in 1973 and \$24,875.00 in 1974.

4. As the result of a pre-hearing conference held March 8, 1977, the conferee recomputed petitioners' personal income tax liability, for each of the years at issue, based on a reduction of interest income reported, to the amount deemed taxable by virtue of its connection with the sale of the real property.

5. Petitioners conceded that the installment gain was taxable to New York State. However, petitioners contended that the mortgage interest was not taxable to New York State, since they were nonresidents, and the interest received was income from an intangible which was not income derived from, or in connection with, ownership of any real or tangible property located in New York State.

#### CONCLUSIONS OF LAW

A. That section 632(b) (2) provides that:

"Income from intangible personal property, including annuities, dividends, interest, and gains from the disposition of intangible personal property, shall constitute income derived from New York sources only to the extent that such income is from property employed in a business, trade, profession, or occupation carried on in this State."

Accordingly, the interest received from a mortgage on real property which was employed in petitioners' former business within New York State was includable in their New York adjusted gross income.

B. That an adjustment should be made for the exclusion of nontaxable interest in the Statement of Audit Changes and in the Notice of Deficiency issued against petitioners.

C. That the petition of Phillip J. Carlton and Sharon Carlton is granted to the extent indicated in Conclusion of Law "B" above. The Audit Division is hereby directed to modify accordingly the Notice of Deficiency issued April 14, 1976; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

JUL 25 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER